IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1579 (MS) OF 2001

(Old No. 28363/2000)

Raj Kumar, S/o Mr. Shyam Singh,
R/o Village Kheri Sundian,
District-Muzaffar Nagar.

.....Petitioner.

Versus

1. State of U.P. through its District Magsitrate, Haridwar.
2. Dy. Labour Commissioner, Saharanpur.
3. Miss Baby, D/o Mr. Janeshwar,
   Resident of Village Tikola Kalan, Distt. Haridwar.

.....Respondents.

Dated: 27.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Sharad Sharma, Advocate for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 28.02.2000 and recovery citation dated 31.05.2000.

Briefly stated, the petitioner was served with a notice dated 13.11.1999 issued by the Asst. Commissioner calling upon the petitioner to file objection against the allegation raised in the notice to the effect that during the inspection held on 20.02.1999 three child labourers were found working in the brick kiln of the petitioner. Against the said notice, the petitioner filed his objection on 07.06.1999.

The said objection was rejected by the respondent no.2 on 28.02.2000 and a liability of 20,000/- was fixed on the petitioner.

The grievance of the petitioner is that he has not been considered carefully and he has never engaged any child in the employment.

Petitioner has relied upon the judgment dated 08.12.1999 passed in Writ Petition No. 49877 of 1999 Gulshan Kumar Vs. State of U.P. The operative portion of thue aforesaid judgment is quoted below:-

"This petition is being filed challenging imposition of penalty on the basis of judgment of the Apex Court in thue case of M.C. Mehta versus State of Tamil Nadu AIR 1997 SC 699 impending enquiry under Child Labour (Prohibition and Regulation) Act, 1986 called 'the Act'.

It is contended by the petitioner that objections were filed against show cause notice but the same has not been decided by affording an opportunity of hearing as required under law. On the other hand the authorities are proceding to recover penalty under the show cause notice without conducting, as required under law a proper survey by competent authority who should have decided objections and also taken into account relevant factors (including nature of the undertaking etc. and other mitigating circumstances) which would have been relevant to determine that amount of penalty i.e. whether maximum or lessor amount of penalty contemplated under law should have been imposed or not.

In view of the decisions in the case of M/s Chhota Bhai Munna Bai and Company, Naini and others Versus State of U.P. 1999 (81) FLR 43), as well as the judgment of the Apex Court in the case of M.S. Mehta (supra), the concerned authorities should not have proceeded arbitrarily.

Authority (competent under the Act) is directed, to keep in mind the above judgments and decide the objections, after affording opportunity of hearing in accordance with law and

pass final order/s before imposing and initiating action of recovery of penalty if at all warranted.

It is open to the concerned authority to pass fresh orders under the Act as aforementioned.

Respondents are restrained from taking steps or action for the recovery of the penalty contained in the 'show cause notice' under the Act. The concerned authority shall decide the objections in accordance with law keeping in mind aforesaid judgments passed and order/s and then take action accordingly."

In view of the aforesaid facts and circumstances, a writ of certiorari is issued quashing the orders dated 28.02.2000 and 31.05.2000. However, liberty is given to the respondents to initiate fresh proceedings after complying the provisions of the order.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

27.06.2006

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